



Agenda Date: 7/7/04  
Agenda Item: 4B

## STATE OF NEW JERSEY

**Board of Public Utilities**  
**Two Gateway Center**  
**Newark, NJ 07102**  
[www.bpu.state.nj.us](http://www.bpu.state.nj.us)

IN THE MATTER OF THE PETITION OF	)	<u>TELECOMMUNICATIONS</u>
LEVEL 3 COMMUNICATIONS, LLC FOR	)	
APPROVAL TO PARTICIPATE IN CERTAIN	)	ORDER OF APPROVAL
FINANCING ARRANGEMENTS	)	
	)	DOCKET NO. TF04040293

(SERVICE LIST ATTACHED)

BY THE BOARD:

On April 23, 2004, a Verified Petition was filed with the Board of Public Utilities (Board) on behalf of Level 3 Communications, LLC (Level 3 or Petitioner) to participate in certain financing arrangements entered into by its immediate corporate parent, Level 3 Financing, Inc. (Parent) whereby Level 3 would become a guarantor with respect to certain Senior Notes (Notes) issued by Parent in the aggregate principal amount of \$500 million, in accordance with N.J.S.A. 48:3-7, 48:3-9 and/or any other provisions of Title 48 deemed applicable by the Board. The Verified Petition requested expedited consideration of this matter.

Level 3 is a Delaware limited liability company with corporate offices located at 1025 Eldorado Boulevard, Broomfield, Colorado 80021. Petitioner is a wholly owned subsidiary (Parent) which is, in turn, a wholly owned subsidiary of Level 3 Communications, Inc., a publicly-traded Delaware corporation. Level 3 is authorized to provide resold and facilities-based local exchange and interexchange telecommunications services in New Jersey pursuant to the Board's Order of Approval in Docket No. TE97120913 issued on October 20, 1998. In addition to the authority it holds in New Jersey, Level 3 is authorized to provide resold and/or facilities-based telecommunications services nationwide pursuant to certification, registration or tariff requirements, or on a deregulated basis. Level 3 is also authorized by the Federal Communications Commission to provide international and domestic interstate services as a non-dominant carrier.

Petitioner seeks approval to act as guarantor in an offering of 10.75% (Notes) previously issued in the aggregate principal amount of \$500 million. The facilities mature in 2011.

Petitioner indicates the proceeds from the Notes were used to reduce existing indebtedness of Parent, including satisfaction in full of a previously existing senior secured credit facility, thereby allowing Parent to lock in existing interest rates over a longer period of time, improving certainty of Parent's payment obligations and allowing Parent to reduce the potential affect of changes in interest rates on Parent's and Petitioner's operations. Petitioner also notes that the financial transactions described in the Petition did not increase the aggregate magnitude of Parent's indebtedness.

Petitioner states that the Notes were issued without its involvement in order to take advantage of favorable but rapidly changing market conditions. Petitioner states it agreed to enter into a subsequent arrangement to guarantee its Parent's obligations under the Notes after obtaining required approvals; the financing arrangements recognize Petitioner's guarantee will not take effect until it secures Board approval of same.

Petitioner refers to the issuance of the Notes and its subsequent guarantee, collectively, as the "financing arrangements." Petitioner submits that its participation in the financing arrangements is consistent with the public interest in that such participation will: (i) enhance competition among telecommunications carriers by providing Petitioner and Parent with the opportunity to strengthen their financial position; (ii) provide important financial benefits to the Petitioner and Parent by improving and expanding the terms of credit under which the companies operate, and as a result, the proposed transactions are expected to continue to yield financial benefits that ultimately inure to the benefit of Petitioner's customers; and (iii) increase the breadth and scope of telecommunications services made available through the Petitioner's ongoing operations, thus ultimately benefiting New Jersey consumers. Petitioner states that the issuance of the Notes and the guarantee were and will be entirely transparent to consumers, will not cause a change in the officers or directors of Petitioner and will not alter the rates, terms and conditions under which Petitioner provides service in New Jersey.

On May 5, 2004, the Division of Ratepayer Advocate submitted a letter to the Board recommending that the Board approve the Petition.

In response to a Staff request for additional information, Level 3 provided a copy of the form of Supplemental Indenture to be executed by Level 3, and an explanation of the underlying interest rate on the Notes.

Based on the foregoing, the Board FINDS that the guarantee agreement is necessary and appropriate, is consistent with the performance by Petitioner of its services to the public, will not impair the ability of Petitioner to perform such services, and will promote a lawful objective within the corporate purposes of Petitioner.

Therefore, the Board HEREBY APPROVES AND AUTHORIZES Petitioner's participation in the financing arrangements of Parent, as set forth in Level 3's petition dated April 23, 2004. The Board also APPROVES AND AUTHORIZES Petitioner to act as guarantor in the financing arrangements described in the petition and to execute appropriate documents in order to do so. Finally, the Board AUTHORIZES Level 3 to take further actions consistent with or required by the financing arrangements and related agreements (including the guarantee agreement).

This Order is issued subject to the following provisions:

1. This Order shall not be construed as directly or indirectly fixing, for any purpose whatsoever, any value of the tangible or intangible assets now owned or hereafter to be owned by Petitioner.

2. Petitioner shall semiannually file with the Board statements for the amount borrowed and use of the proceeds pursuant to N.J.A.C. 14:1-5.9 (b).
3. Notwithstanding anything to the contrary in the documents executed pursuant to the financing transactions or other supporting documents, a default or assignment under such agreement does not constitute automatic transfer of Petitioner's assets. Board approval must be sought pursuant to N.J.S.A. 48:1-1 et seq.
4. This Order shall not affect, or in any way limit the exercise of the authority of this Board, or of the State, in any future petitions or in any proceeding with respect to rates, franchises, services, financing, accounting, capitalization, depreciation or any other matters affecting the Petitioner.

DATED: ***July 8, 2004***

BOARD OF PUBLIC UTILITIES  
BY:

***SIGNED***

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JEANNE M. FOX  
PRESIDENT

***SIGNED***

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FREDERICK F. BUTLER  
COMMISSIONER

***SIGNED***

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CAROL J. MURPHY  
COMMISSIONER

***SIGNED***

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CONNIE O. HUGHES  
COMMISSIONER

***SIGNED***

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JACK ALTER  
COMMISSIONER

ATTEST:

***SIGNED***

KRISTI IZZO  
SECRETARY

## Service List

### I/M/O petition of Level 3 Communications, LLC for Approval to Incur Debt Obligation

TF04040293

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